

June 28, 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

BY: Sylvia Ann Fernandez
DEPUTY

UNITED STATES OF AMERICA,
Plaintiff

-vs-

(1) MICHAEL ANGELO PADRON,
Defendant

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SA-21-CR-00124-XR

JURY INSTRUCTIONS AND CHARGE

MEMBERS OF THE JURY:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about the burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or

follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The defendant begins with a clean slate. The law does not require a defendant to prove his innocence or produce any evidence at all and no inference whatever may be drawn from the election of a defendant not to testify.

The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in making the most important decisions of your own affairs.

EVIDENCE – EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. To do so, you must consider only the evidence presented during the trial. Evidence is the sworn testimony of the witnesses,

including stipulations, and the exhibits. The questions, statements, objections, and arguments made by the lawyers are not evidence.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Also, certain testimony or other evidence has been ordered removed from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been removed from your consideration in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own verdict.

EVIDENCE – INFERENCES, DIRECT AND CIRCUMSTANTIAL EVIDENCE

In considering the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

Do not be concerned about whether evidence is “direct evidence” or “circumstantial evidence.” You should consider and weigh all of the evidence that was presented to you.

“Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. “Circumstantial evidence” is proof of a chain of events and circumstances indicating that something is or is not a fact.

The law makes no distinction between the weights to be given either direct or circumstantial evidence. But the law requires that you, after weighing all of the evidence, whether direct or circumstantial, be convinced of the guilt of the defendant beyond a reasonable doubt before you can find him guilty.

CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all, some part, or none of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the

witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

CHARACTER EVIDENCE

Where a defendant has offered opinion testimony concerning truth and veracity, honesty and integrity, or character as a law-abiding citizen, you should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt, since you may think it improbable that a person of good character with respect to those traits would commit such a crime.

IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may not consider the earlier statements to prove that the content of an earlier statement is true; you may only use earlier statements to determine whether you think

the earlier statements are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

IMPEACHMENT BY EVIDENCE OF UNTRUTHFUL CHARACTER

You have heard the testimony of alleged co-conspirator Michael Wibracht. You also heard testimony from others concerning their opinion about whether that witness is a truthful person. It is up to you to decide from what you heard here whether Michael Wibracht is telling the truth in this trial. In deciding this, you should bear in mind the testimony concerning the witness's reputation for truthfulness as well as all other instructions you have been given.

CO-CONSPIRATOR – PLEA AGREEMENT – NON-PROSECUTION AGREEMENT

In this case the government called as its witnesses two alleged co-conspirators with whom the government has entered into plea agreements—Michael Wibracht and Ruben Villarreal. These agreements provide for a favorable sentence recommendation and the government's agreement not to pursue additional criminal charges if the witness provides substantial assistance to the government by testifying truthfully. Such plea bargaining, as it is called, has been approved as lawful and proper, and is expressly provided for in the rules of this court.

In addition, the government called as one of its witnesses, Brian Taylor, with whom the government entered into a non-prosecution agreement. This agreement provides that Mr. Taylor will not be prosecuted for conduct relevant to this offense if the witness provides cooperation with the government's investigation including testifying truthfully.

An alleged co-conspirator, including one who has entered into a plea agreement with the government or a non-prosecution agreement, is not prohibited from testifying. On the contrary, the

testimony of such a witness may alone be of sufficient weight to sustain a verdict of guilty. You should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a defendant upon the unsupported testimony of an alleged co-conspirator unless you believe that testimony beyond a reasonable doubt.

The fact that an co-conspirator has entered a plea of guilty to the offense charged is not evidence of the guilt of any other person.

EXPERT OPINION TESTIMONY

During the trial you heard the testimony of John Klein who expressed opinions concerning federal government small business contracting programs and regulations. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

ON OR ABOUT

You will note that the indictment charges that the offense was committed on or about a specified date. The government does not have to prove that the crimes were committed on the exact dates, so long as the government proves beyond a reasonable doubt that the defendant committed the crime on a date reasonably near the dates stated in the indictment.

VENUE – CONSPIRACY

The events presented at trial happened in various places. For Count One, there is no requirement that the entire conspiracy take place in the Western District of Texas, but in order for you to return a guilty verdict, the government must prove by a preponderance of the evidence that either the agreement or an overt act took place in this district, even if the defendant never set foot in the district. An overt act is an act performed to affect the object of a conspiracy, although it remains separate and distinct from the conspiracy itself. Though the overt act need not be of criminal nature, it must be done in furtherance of the object of the conspiracy.

Unlike the other elements of the offense, this is a fact that the government has to prove only by a preponderance of the evidence. This means the government has to convince you only that it is more likely than not that part of the alleged conspiracy took place in the Western District of Texas. All other elements of the offense must be proved beyond a reasonable doubt. You are instructed that San Antonio, Texas and Austin, Texas are located in the Western District of Texas.

For Counts 2 through 9, there is similarly no requirement that the entire alleged scheme to defraud take place in the Western District of Texas, but in order for you to return a guilty verdict, the government must prove by a preponderance of the evidence that either the charged wire communications began, continued, or were completed in the Western District of Texas, or that the alleged scheme to defraud or an act in furtherance of the scheme took place in the Western District of Texas.

CAUTION – CONSIDER ONLY THE CRIMES CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crimes charged. The defendant is not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you called upon to return a verdict as to the guilt

of any other person or persons not on trial as a defendant in this case, except as you are otherwise instructed.

SIMILAR ACTS

You have heard evidence of acts of the defendant which may be similar to those charged in the indictment, but which were committed on other occasions. You must not consider any of this evidence in deciding if the defendant committed the acts charged in the indictment. However, you may consider this evidence for other, very limited, purposes.

If you find beyond a reasonable doubt from other evidence in this case that the defendant did commit the acts charged in the indictment, then you may consider evidence of the similar acts allegedly committed on other occasions to determine:

Whether the defendant had the state of mind or intent necessary to commit the crime charged in the indictment;

or

Whether the defendant had a motive or the opportunity to commit the acts charged in the indictment;

or

Whether the defendant acted according to a plan or in preparation for commission of a crime;

or

Whether the defendant committed the acts for which he is on trial by accident or mistake.

These are the limited purposes for which any evidence of other similar acts may be considered.

SUMMARIES AND CHARTS RECEIVED INTO EVIDENCE

Certain charts and summaries of other records have been received into evidence. They should be considered like any other evidence in the case. You should give them only such weight as you think they deserve.

The charts and summaries include inferences or conclusions drawn from the records underlying them. It is up to you to determine if these inferences or conclusions are accurate.

The underlying records are the best evidence of what occurred.

CAUTION – PUNISHMENT

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

SINGLE DEFENDANT – MULTIPLE COUNTS

A separate crime is charged in each count of the indictment. Each count, and the evidence pertaining to it, should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the crimes charged should not control your verdict as to any other.

COUNT ONE – UNANIMITY OF THEORY

You have been instructed that your verdict, whether it is guilty or not guilty, must be unanimous. The following instruction applies to the unanimity requirement as to Count One.

Count One of the indictment accuses the defendant of committing the crime of conspiracy in three different ways. The first is that the defendant Michael Padron conspired with Michael Wibracht, Ruben Villarreal, Brian Taylor, or Steven Wibracht to commit the offense of wire fraud against the United States. The second is that the defendant Michael Padron conspired with Michael Wibracht, Ruben Villarreal, Brian Taylor, or Steven Wibracht to defraud the United States by

obtaining money by means of false and fraudulent pretenses, representations and promises. The third is that the defendant Michael Padron conspired with Michael Wibracht, Ruben Villarreal, Brian Taylor, or Steven Wibracht to defraud the United States by interfering with the lawful functioning of the Small Business Administration.

The government does not have to prove all of these for you to return a guilty verdict on this charge. Proof beyond a reasonable doubt on one is enough. But in order to return a guilty verdict, all of you must agree that the same one has been proved. All of you must agree that the government proved beyond a reasonable doubt that the defendant Michael Padron conspired with Michael Wibracht, Ruben Villarreal, Brian Taylor, or Steven Wibracht to commit the offense of wire fraud against the United States; or, all of you must agree that the government proved beyond a reasonable doubt that the defendant Michael Padron conspired with Michael Wibracht, Ruben Villarreal, Brian Taylor, or Steven Wibracht to defraud the United States by obtaining money by means of false and fraudulent pretenses, representations and promises; or, all of you must agree that the government proved beyond a reasonable doubt that the defendant Michael Padron conspired with Michael Wibracht, Ruben Villarreal, Brian Taylor, or Steven Wibracht to defraud the United States by interfering with the lawful functioning of the Small Business Administration.

COUNT ONE – CONSPIRACY TO COMMIT WIRE FRAUD

I will first explain the elements for the first objective of the Count 1 conspiracy—conspiracy to commit wire fraud. Title 18, United States Code, Section 371, makes it a crime for two or more persons to conspire to commit an offense against the laws of the United States. The defendant is charged with conspiring to commit wire fraud, in violation of 18 U.S.C. § 1343.

A “conspiracy” is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of “partnership in crime” in which each member of the conspiracy becomes the agent of every other member.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant and at least one other person agreed to commit the crime of wire fraud, which I will explain in a moment;

Second: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

Third: That at least one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

The overt act need not be of a criminal nature so long as it is done in furtherance of the conspiracy.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict him for conspiracy even though the defendant had not participated before and even though the defendant played only a minor part.

The government does not need to prove that the alleged conspirators entered into any formal agreement, or that they directly stated between themselves all the details of the scheme. Likewise, the government does not need to prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons

alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of a conspiracy, does not thereby become a conspirator.

COUNT ONE – CONSPIRACY TO DEFRAUD THE UNITED STATES

I will now explain the elements for the second and third objectives of the Count One conspiracy—conspiracy to defraud the United States by obtaining money; and conspiracy to defraud the United States by interfering with a lawful government function. Title 18, United States Code, Section 371, makes it a crime for two or more persons to conspire to defraud the United States or any of its agencies in any manner or for any purpose.

The defendant is charged with conspiring to defraud the United States in two different ways by:

- (i) obtaining money from the United States, and agencies thereof, by means of false and fraudulent pretenses, representations, and promises; and
- (ii) interfering with the lawful function of the Small Business Administration by deceit, craft, trickery and means that were dishonest.

The word “defraud” here is not limited to its ordinary meaning of cheating the government out of money or property; it also includes impairing, obstructing, defeating, or interfering with the lawful function of the government or one of its agencies by dishonest means.

A “conspiracy” is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of “partnership in crime,” in which each member becomes the agent of every other member.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant and at least one other person made an agreement to defraud the government or one of its agencies by (i) obtaining money under false pretenses from the United States or (ii) interfering with the lawful function of the Small Business Administration, as charged in the indictment;

Second: That the defendant knew that the purpose of the agreement was to defraud the government and joined in it willfully, that is, with the intent to defraud; and

Third: That at least one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

The overt act need not be of a criminal nature so long as it is done in furtherance of the conspiracy.

As I explained in connection with the other alleged purpose of the conspiracy, one may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict him for conspiracy even though the defendant had not participated before and even though the defendant played only a minor part.

The government does not need to prove that the alleged conspirators entered into any formal agreement, or that they directly stated between themselves all the details of the scheme. Likewise, the government does not need to prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way that advances some purpose of a conspiracy, does not thereby become a conspirator.

“KNOWINGLY” – TO ACT

The word “knowingly,” as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.

“WILLFULLY” – TO ACT

The word “willfully,” as that term has been used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

CONSPIRATOR’S LIABILITY FOR SUBSTANTIVE COUNT

A conspirator is responsible for offenses committed by other conspirators if the conspirator was a member of the conspiracy when the offense was committed and if the offense was committed in furtherance of, and as a foreseeable consequence of, the conspiracy.

Therefore, if you have first found the defendant guilty of the conspiracy charged in Count One and if you find beyond a reasonable doubt that during the time the defendant was a member of that conspiracy, other conspirators committed the offenses in Counts Two through Nine both in furtherance of and as a foreseeable consequence of that conspiracy, then you may find the defendant guilty of Counts Two through Nine, even though the defendant may not have participated in any of the acts which constitute the offense(s) described in Counts Two through Nine.

COUNTS TWO THROUGH NINE – WIRE FRAUD

Title 18, United States Code, Section 1343, makes it a crime for anyone to use interstate wire communications in carrying out a scheme to defraud.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly devised or intended to devise any scheme to defraud, that is to defraud the United States by unlawfully obtaining federal government construction contracts set aside for businesses owned and controlled by service-disabled veterans;

Second: That the scheme to defraud employed false material representations, pretenses, or promises;

Third: That the defendant transmitted or caused to be transmitted by way of wire communications, in interstate commerce, any writing, sign, signal, picture, or sound for the purpose of executing such scheme; and

Fourth: That the defendant acted with a specific intent to defraud.

A “scheme to defraud” means any plan, pattern, or course of action intended to deprive another of money or property or bring about some financial gain to the person engaged in the scheme.

A “specific intent to defraud” means a conscious, knowing intent to deceive or cheat the United States.

A representation, pretense, or promise is “false” if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation, pretense, or promise would also be “false” if it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with the intent to defraud.

A representation, pretense, or promise is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the person or entity to which it is addressed.

It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme. What must be proved beyond a reasonable doubt is that the defendant knowingly devised or intended to devise a scheme to defraud by means of false or fraudulent pretenses, representations, or promises that was substantially the same as the one alleged in the indictment.

It is also not necessary that the government prove that the material transmitted by wire communications was itself false or fraudulent, or that the use of the interstate wire communications facilities was intended as the specific or exclusive means of accomplishing the alleged fraud. What must be proved beyond a reasonable doubt is that the use of the interstate wire communications facilities was closely related to the scheme because the defendant either wired something or caused it to be wired in interstate commerce in an attempt to execute or carry out the scheme.

The alleged scheme need not actually succeed in defrauding anyone.

To “cause” interstate wire communications facilities to be used is to do an act with knowledge that the use of the wire communications facilities will follow in the ordinary course of business or where such use can reasonably be foreseen.

Each separate use of the interstate wire communications facilities in furtherance of a scheme to defraud by means of false or fraudulent pretenses, representations, or promises constitutes a separate offense.

Once membership in a scheme to defraud is established, a knowing participant is liable for any wire communication which subsequently takes place, or which previously took place in connection with the scheme.

INTERSTATE COMMERCE – DEFINED

Interstate commerce means commerce or travel between one state, territory or possession of the United States and another state, territory or possession of the United States, including the District of Columbia.

STIPULATIONS OF FACT

The government and the defendant agreed or stipulated to certain evidence. This means that both the government and the defendant accept these facts. There is no disagreement over these points, so there is no need for evidence by either side on those points. You must accept points as fact, even though nothing was said about them one way or another.

The government and the defendant have stipulated and agreed to the following with respect to each count identified below:

Count 2: The August 18, 2016, email identified in Count 2 traveled in, affected, and flowed in interstate commerce by being transmitted from San Antonio, Texas to Illinois.

Count 3: The September 23, 2016, electronic certification identified in Count 3 traveled in, affected, and flowed in interstate commerce by being transmitted from San Antonio, Texas to Virginia.

Count 4: The October 8, 2016, electronic invoice identified in Count 4 traveled in, affected, and flowed in interstate commerce by being transmitted from San Antonio, Texas to Illinois.

Count 5: The December 2, 2016, electronic invoice identified in Count 5 traveled in, affected, and flowed in interstate commerce by being transmitted from San Antonio, Texas to Illinois.

Count 6: The November 16, 2017, electronic invoice identified in Count 6 traveled in, affected, and flowed in interstate commerce by being transmitted from San Antonio, Texas to Illinois.

Count 7: The October 13, 2016, wire transfer of funds identified in Count 7 traveled in, affected, and flowed in interstate commerce by being transmitted from Austin, Texas, to Missouri, to New Jersey.

Count 8: The December 9, 2016, wire transfer of funds identified in Count 8 traveled in, affected, and flowed in interstate commerce by being transmitted from Austin, Texas, to Missouri, to New Jersey.

Count 9: The November 22, 2017, wire transfer of funds identified in Count 9 traveled in, affected, and flowed in interstate commerce by being transmitted from Austin, Texas, to Missouri, to New Jersey.

USE OF NOTES

Remember at all times, you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

DUTY TO DELIBERATE

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the indictment.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way. In particular, do not let racial, ethnic, national origin, or other bias influence your decision in any way. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges—judges of the facts. Your duty is to decide whether the government has proved the defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom.


A verdict form has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the space provided for each count of the indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the court security officer. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the indictment, until after you have reached a unanimous verdict.

SIGNED this 28th day of June, 2022.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE